

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,	:	
	:	<u>INDICTMENT</u>
- v. -	:	
	:	00 Cr.
RICHARD A. SVOBODA and	:	
MICHAEL A. ROBLES,	:	
	:	
Defendants.	:	
-----x	:	

The Grand Jury charges:

**COUNT ONE**

(Conspiracy to Commit Fraud in Connection  
with the Purchase and Sale of Securities  
and Fraud in Connection With Tender Offers)

**Introduction**

1. At all times relevant to this Indictment, NationsBank Corp. was a bank holding company organized under the laws of the State of North Carolina. NationsBank was headquartered in Charlotte, North Carolina, and was engaged in the business of banking through offices located throughout the world, including Dallas, Texas. Among other things, NationsBank was in the business of extending credit to various clients for a variety of purposes, including mergers and acquisitions.

2. At all times relevant to this Indictment, RICHARD A. SVOBODA, the defendant, was employed as a credit policy officer for NationsBank N.A., a wholly owned subsidiary of NationsBank Corp. In that capacity, SVOBODA had access to confidential, material, non-public information of NationsBank and its clients.

3. At all times relevant to this Indictment, MICHAEL A.

ROBLES, the defendant, was a self-employed certified public accountant in Dallas, Texas. ROBLES and RICHARD A. SVOBODA, the defendant, were friends.

**NationsBank Policies Concerning Confidentiality  
and the Prohibition Against Insider Trading**

4. By no later than in or about June 1995, NationsBank's written "General Policy on Insider Trading" was provided to all NationsBank employees and stated, among other things, that:

No director or associate of NationsBank may trade in any security, either personally, or for or on the behalf of others, including propriety or fiduciary accounts of NationsBank, while in possession of Inside Information relating to such security, or communicate or disclose, in any manner, Inside Information to others in violation of a duty to keep it confidential. (emphasis omitted)

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Inside information about a company generally should not be disclosed or disseminated to others either within or outside the NationsBank organization, absent a reasonable need to know that furthers a legitimate business purpose of NationsBank or the subject company. Unlawfully disclosing or "tipping" information about a company to others who then trade while in possession of the information may give rise to claims against the person tipping the information.

5. In or about April 1997, NationsBank revised its compliance procedures with respect to employee securities transactions to require that employees pre-clear all trades with, and disclose all new securities accounts and trading activity to, NationsBank's Corporate Compliance Department. In addition, in or about April 1997, NationsBank revised its policy concerning

confidential information. This revised policy, which was provided in written form to all NationsBank employees, stated as follows:

Associates are responsible for maintaining the integrity of confidential information learned during the course of employment with the firm. . . .

All material nonpublic information and confidential information obtained by an associate during the course of employment must remain confidential and should be used only for the business purpose it was communicated.

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**SVOBODA'S and ROBLES'S Trading Accounts**

6. At certain times relevant to this Indictment, RICHARD A. SVOBODA, the defendant, maintained a brokerage account at Everen Securities, Inc., and MICHAEL A. ROBLES, the defendant, maintained brokerage accounts at Charles Schwab & Co. and Fidelity. In addition, ROBLES maintained discretionary trading authority on behalf of four clients of his accounting business at brokerage accounts maintained at Charles Schwab & Co. Inc. The illegal trading described herein occurred in one or more of these brokerage accounts.

**The NationsBank Clients**

7. At all times relevant to this Indictment, and as part of its banking business, NationsBank extended credit to various clients for a variety of purposes. As required by agreements incident to those extensions of credit, and in order to permit NationsBank to assess the safety and profitability of its extensions of credit, the clients provided NationsBank with confidential, material, nonpublic information ("Inside

Information") concerning, among other things, their business operations and future plans.

8. As set forth below, in connection with extensions of credit, 11 of the NationsBank clients (the "NationsBank Clients") provided Inside Information to NationsBank concerning expected earnings, or actual or potential corporate mergers or acquisitions, prior to the public announcement of such events, as set forth below:

<b>NATIONSBANK CLIENT</b>	<b>TARGET OR OFFEROR</b>	<b>NATURE OF INFORMATION</b>	<b>DATE OF ANNOUNCEMENT</b>
Moorco International ("Moorco")	Daniel Industries ("Daniel")	Moorco seeks to acquire Daniel	03/07/95
NPC International, Inc. ("NPC")	NPC	NPC announces a proposed management buyout of NPC	11/06/95
The Rival Company ("Rival")	Bionaire, Inc. ("Bionaire")	Rival announces discussions with Bionaire regarding possible acquisition	02/28/96
Ivax Corporation ("Ivax")	N/A	Ivax announces \$179 million loss for the quarter	11/11/96
Eljer Industries ("Eljer")	Zurn Industries ("Zurn")	Zurn to acquire Eljer	12/16/96
Riddell Sports, Inc. ("Riddell")	Varsity Spirit Corp. ("Varsity Spirit")	Riddell Sports to acquire Varsity Spirit	05/06/97

<b>NATIONS BANK CLIENT</b>	<b>TARGET OR OFFEROR</b>	<b>NATURE OF INFORMATION</b>	<b>DATE OF ANNOUNCEMENT</b>
Anthem Insurance Companies, Inc. ("Anthem") and Acordia Industries ("Acordia")	Acordia	Anthem announces possible acquisition of Acordia	05/20/97
Sun Healthcare Group, Inc. ("Sun Healthcare")	Regency Health Services ("Regency")	Sun Healthcare to acquire Regency	07/27/97
Petsmart, Inc. ("Petsmart")	N/A	Petsmart announces lower than expected earnings	08/07/97
Credit Acceptance Corporation ("Credit Acceptance")	N/A	Credit Acceptance announces a net loss of \$27.7 million for the quarter	10/22/97
O'Reilly Automotive, Inc. ("O'Reilly Automotive")	Hi-Lo Automotive, Inc. ("Hi-Lo Automotive")	O'Reilly Automotive to acquire Hi-Lo Automotive	12/23/97

### **The Insider Trading Scheme**

9. As a credit policy officer, RICHARD A. SVOBODA, the defendant, was responsible for evaluating credit extended by NationsBank to certain clients, and for assessing credit arrangements with clients. In carrying out his responsibilities, SVOBODA worked closely with NationsBank "client relationship managers," who were in frequent contact with the clients. These client relationship managers typically informed SVOBODA of any developments which might affect the credit agreements those clients

maintained with NationsBank. As a result of the duties and responsibilities, SVOBODA had access to Inside Information of NationsBank and its clients, including the NationsBank Clients. SVOBODA owed fiduciary and other duties of trust and confidence to both NationsBank and its clients, which required that he maintain the confidentiality of all such Inside Information.

10. As set forth more fully below, between in or about November 1994 and in or about December 1997, RICHARD A. SVOBODA, the defendant, misappropriated Inside Information from NationsBank and the NationsBank Clients, in violation of (a) the fiduciary and other duties of trust and confidence that SVOBODA owed to NationsBank and the NationsBank Clients; (b) the expectations of confidentiality of the NationsBank Clients; and (c) NationsBank's written policies regarding the use and safekeeping of confidential and proprietary client information.

11. As set forth more fully below, between in or about November 1994 and in or about December 1997, RICHARD A. SVOBODA, the defendant, misappropriated Inside Information from NationsBank and the NationsBank Clients, and used that information to purchase and sell securities, and thereby received substantial illegal profits, all in violation of the law.

12. As set forth more fully below, between in or about November 1994 and in or about December 1997, RICHARD A. SVOBODA, the defendant, misappropriated Inside Information from NationsBank and the NationsBank clients, and passed that information to MICHAEL

A. ROBLES, the defendant, with the understanding that ROBLES would use that information to purchase and sell securities, and thereby receive substantial illegal profits, all in violation of the law.

13. As set forth more fully below, between in or about November 1994 and in or about December 1997, MICHAEL A. ROBLES, the defendant, using Inside Information that he knew RICHARD A. SVOBODA, the defendant, had misappropriated in breach of a duty of trust and confidence that SVOBODA owed to NationsBank and the NationsBank Clients, purchased and sold securities, and thereby received substantial illegal profits, all in violation of the law.

**Moorco International's  
Potential Acquisition of Daniel Industries**

14. In or about November 1994, RICHARD A. SVOBODA, the defendant, as a direct result of his employment by NationsBank, obtained Inside Information that Moorco was contemplating the acquisition of Daniel. Specifically, a memorandum dated November 7, 1994, addressed to a NationsBank credit policy officer whose office was located close to the office assigned to SVOBODA, and with whom SVOBODA shared a secretary, disclosed Moorco's interest in acquiring Daniel. The memorandum described Moorco's contemplated acquisition of Daniel as "highly confidential and potentially hostile." The memorandum also contained pro forma consolidated financial summaries of the prospective post-acquisition entity based on two possible acquisition prices of \$17.50 and \$20.00 per share. These prices represented a

significant premium above the trading range of Daniel common stock during that time period. The memorandum also explained, for purposes of confidentiality, that Daniel's code name would be "Darwin."

15. In addition, on or about January 12, 1995, a NationsBank credit policy officer signed a modification to a Credit Approval Report ("CAR"), which modified NationsBank's credit agreement with Moorco to allow the company to purchase 4.9 percent of the outstanding share of Darwin prior to its attempt to acquire the company. A CAR is an internal NationsBank document which memorializes a client's request, the reason for the request, and the client relationship manager's analysis of that request.

16. On or about November 18, 1994, RICHARD A. SVOBODA, the defendant, using the Inside Information concerning a potential takeover of Daniel, purchased 4,500 shares of Daniel common stock for \$12.625 per share. Using the Inside Information, between on or about January 3, 1995 and on or about January 12, 1995, SVOBODA purchased approximately 3,000 shares of Daniel common stock at prices ranging from \$13.00 to \$13.38 per share.

17. By no later than on or about January 6, 1995, RICHARD A. SVOBODA, the defendant, disclosed the Inside Information concerning the potential takeover of Daniel to MICHAEL A. ROBLES, the defendant. ROBLES knew that this information was confidential, material, and non-public, and had been misappropriated by SVOBODA in breach of his fiduciary and other duties of trust and



confidence. Using the Inside Information, from on or about January 6, 1995 to on or about January 20, 1995, ROBLES purchased approximately 4,000 shares of Daniel common stock at prices ranging between \$13.00 per share and \$14.38 per share.

18. On or about March 7, 1995, Moorco publicly announced a proposed merger with Daniel in which each share of Daniel common stock would be converted into the right to receive \$11.90 in cash and 0.3 shares of Moorco common stock. As a result of the announcement, the closing price of Daniel common stock on March 8, 1995, was \$14.75 per share, an increase of \$2.85 over the previous day's closing price.

19. On or about March 8, 1995, Daniel publicly announced that it had rejected Moorco's takeover bid.

20. From on or about March 9, 1995 to on or about April 3, 1995, RICHARD A. SVOBODA, the defendant, sold approximately 7,500 shares of Daniel shares common stock at prices ranging from \$14.38 to \$15.25 per share, thereby earning a total illegal profit of approximately \$12,315.

21. On or about March 10, 1995, MICHAEL A. ROBLES, the defendant, sold 700 shares of Daniel common stock for \$15.38 per share, and on or about April 3, 1995 ROBLES sold 800 shares for \$14.50 per share, thereby earning a total illegal profit of approximately \$5,887.

**NPC Management's  
Proposed Leveraged Buyout of NPC**

22. As of in or about October 1995, RICHARD A. SVOBODA, the defendant, served as the NationsBank credit policy officer for NPC. As a direct result of that position, SVOBODA obtained Inside Information that NPC was seeking financing from NationsBank for a contemplated management-led leveraged buyout of NPC. On or about October 31, 1995, a letter was faxed from NationsBank's credit policy group, where SVOBODA worked, to NPC's Chief Financial Officer, which read in part:

You have informed us that NPC International, Inc. proposes to repurchase approximately 38% of its outstanding shares of common capital stock for an aggregate purchase price of \$90,000,000 and to refinance its existing indebtedness. . . . You have asked NationsBank Capital Markets, Inc. . . . to evaluate the feasibility of arranging the Senior Credit Facilities required to consummate the recapitalization. . . . We believe that the Recapitalization is financeable . . . .

23. On or about November 3, 1995, RICHARD A. SVOBODA, the defendant, used the Inside Information concerning a potential leveraged buyout of NPC to purchase 5,000 shares of NPC common stock for \$6.50 per share.

24. By no later than on or about November 3, 1995, RICHARD A. SVOBODA, the defendant, disclosed the Inside Information concerning a potential leveraged buyout of NPC to MICHAEL A. ROBLES, the defendant. ROBLES knew that this information was confidential, material, and non-public, and had been misappropriated by SVOBODA in breach of his fiduciary and other

duties of trust and confidence. On or about November 3, 1995, using the Inside information, ROBLES purchased 6,000 shares of NPC common stock for \$6.50 per share.

25. On or about November 6, 1995, NPC publicly announced that it would evaluate a proposal submitted by an NPC management group in which the management group would acquire all outstanding NPC common stock for \$9.00 per share. Following the announcement, NPC's common stock price increased by \$2.00 per share to close at \$8.25.

26. On or about December 6, 1995, MICHAEL A. ROBLES, the defendant, sold his shares of NPC common stock for \$7.88 per share, thereby earning an illegal profit of approximately \$7,632. From on or about December 7, 1995, to on or about December 11, 1995, RICHARD A. SVOBODA, the defendant, sold 5,000 shares of NPC stock for \$7.88 per share, thereby earning a total illegal profit of approximately \$6,068.

**The Rival Company's  
Tender Offer for Bionaire**

27. As of in or about February 1996, RICHARD A. SVOBODA, the defendant, served as the NationsBank credit policy officer for Rival. As a direct result of that position, SVOBODA obtained Inside Information that Rival was contemplating the acquisition of Bionaire. Specifically, by at least on or about February 22, 1996, Rival's treasurer had informed a NationsBank client relationship manager that Rival was planning a tender offer for a minimum of

two-thirds of the outstanding common stock of Bionaire. To effect the acquisition, Rival requested that NationsBank modify its existing credit agreement with Rival to make available to Rival as much as \$15 million in financing on a revolving basis.

28. In connection with Rival's request for financing, Rival's treasurer sent a letter, dated February 22, 1996, to a NationsBank client relationship manager enclosing information concerning Rival's acquisition of Bionaire, as well as the timing and terms of the contemplated acquisition:

We have successfully concluded our negotiations with Bionaire, Inc. out of Montreal, Canada. We have agreed on an offering price to attempt to purchase all of the outstanding stock . . . Both Rival and Bionaire have decided on a very accelerated time table since any movement in their stock price upward could hurt our chances of securing 2/3 of the stock necessary to effect the transaction . . . . Our goal is to do a simultaneous Press Release on March 4, 1996, announcing the tender offer . . . .

29. On or about February 22, 1996, RICHARD A. SVOBODA, the defendant, used Inside Information concerning a potential takeover of Bionaire to purchase 50,000 shares of Bionaire common stock at prices ranging from \$0.74 to \$0.78 per share.

30. By no later than on or about February 22, 1996, RICHARD A. SVOBODA, the defendant, disclosed the Inside Information concerning a potential takeover of Bionaire to MICHAEL A. ROBLES, the defendant. ROBLES knew that this information was confidential, material, and non-public, and had been misappropriated by SVOBODA in breach of his fiduciary and other duties of trust and

confidence. Using that Inside Information, from on or about February 22, 1996 through on or about February 23, 1996, ROBLES purchased approximately 125,000 shares of Bionaire common stock at prices ranging from 0.73 to 0.83 per share.

31. On or about February 28, 1996, Rival and Bionaire publicly announced that they were discussing the possibility of Rival acquiring Bionaire for \$2.25 Canadian (approximately \$1.64 US) per share. On or about March 4, 1996, Rival publicly announced that it had commenced a tender offer to purchase the outstanding shares of Bionaire at that price.

32. On or about March 19, 1996, RICHARD A. SVOBODA, the defendant, sold his 50,000 shares of Bionaire common stock for \$1.60 per share, thereby earning an illegal profit of approximately \$38,555. On or about April 3, 1996, MICHAEL A. ROBLES, the defendant, sold his 125,000 shares of Bionaire common stock for \$1.66 per share, thereby earning an illegal profit of approximately \$106,631.

**Ivax Announces  
\$179 Million Loss for the Quarter**

33. In or about November 1996, RICHARD A. SVOBODA, the defendant, as a direct result of his employment by NationsBank, obtained Inside Information that Ivax was projecting a \$178.7 million loss for the quarter ending September 30, 1996, which was more than \$100 million greater than previously estimated. An internal NationsBank document, known as a Criticized Exposure

Report, dated October 31, 1996, and distributed to SVOBODA's direct supervisor, downgraded Ivax's risk rating based on Ivax's second quarter loss and its projected third quarter loss.

34. By no later than on or about November 8, 1996, RICHARD A. SVOBODA, the defendant, disclosed the Inside Information concerning Ivax's expected loss to MICHAEL A. ROBLES, the defendant. ROBLES knew that this information was confidential, material, and non-public, and had been misappropriated by SVOBODA in breach of his fiduciary and other duties of trust and confidence. On or about November 8, 1996, ROBLES used the Inside Information and sold short 10,000 shares of Ivax common stock at \$16.00 per share.

35. On or about November 11, 1996, Ivax publicly announced a \$179 million loss for the quarter ending September 30, 1996. Ivax further announced that it would be acquired by another company in a transaction that valued Ivax common stock at \$13.75 per share, which was \$2.00 less than its then-current market price.

36. On about November 11, 1996, MICHAEL A. ROBLES, the defendant, covered his Ivax short position at \$12.75 per share, thereby earning an illegal profit of approximately \$31,717.

#### **Zurn's Acquisition of Eljer**

37. In or about December, 1996, RICHARD A. SVOBODA, the defendant, as a direct result of his employment by NationsBank, obtained Inside Information that Zurn was contemplating acquiring Eljer. Specifically, in or about October or early November 1996,

Eljer advised a NationsBank client relationship manager that Zurn was contemplating an acquisition of Eljer. Sometime thereafter, the client relationship manager informed the credit policy officer assigned to Eljer of the contemplated acquisition. That officer had an office that was adjacent to that assigned to SVOBODA.

38. By no later than on or about December 5, 1996, RICHARD A. SVOBODA, the defendant, used Inside Information concerning a potential takeover of Zurn to purchase 5,000 shares of Eljer common stock at \$12.88 per share.

39. On December 16, 1996, Zurn publicly announced that it would acquire Eljer for \$24.00 per share in cash, which represented a substantial premium above its then-current share price.

40. On or about January 23, 1996, RICHARD A. SVOBODA, the defendant, sold 5,000 shares of Eljer common stock for \$24.00 per share, thereby earning an illegal profit of approximately \$55,171.

**Riddell's  
Acquisition of Varsity Spirit**

41. In or about March 1997, RICHARD A. SVOBODA, the defendant, as a direct result of his employment by NationsBank, obtained Inside Information that Riddell was contemplating the acquisition of Varsity Spirit. An e-mail, dated March 27, 1997, was sent from a NationsBank client relationship manager assigned to the Riddell account to, among others, SVOBODA's supervisor. The e-

mail disclosed that Riddell was negotiating an acquisition of Varsity Spirit, and was requesting \$135 million in financing from NationsBank. The client relationship manager attached a Credit Approval Report to the e-mail, and requested a prompt response because Riddell had requested "commitments" by March 31, 1997. On or about March 31, 1997, SVOBODA's supervisor sent a responsive e-mail to the client relationship manager in which he concurred with Riddell's request for financing.

42. By no later than on or about March 29, 1997, RICHARD A. SVOBODA, the defendant, disclosed the Inside Information concerning Riddell's contemplated acquisition of Varsity Spirit to MICHAEL A. ROBLES, the defendant. ROBLES knew that this information was confidential, material, and non-public, and had been misappropriated by SVOBODA in breach of his fiduciary and other duties of trust and confidence. Using the Inside information, from on or about March 29, 1997 through on or about April 1, 1997, ROBLES purchased approximately 10,000 shares of Varsity Spirit common stock at \$15.25 per share.

43. On or about May 6, 1997, Varsity Spirit and Riddell publicly announced a definitive merger agreement, in which Riddell agreed to acquire all outstanding Varsity Spirit common stock for \$18.50 per share.

44. On or about May 6, 1997, MICHAEL A. ROBLES, the defendant, sold his shares of Varsity Spirit common stock for \$18.38 per share, thereby earning an illegal profit of



approximately \$30,346.

**Anthem to Acquire All  
Outstanding Shares of Acordia**

45. As of or about March 1997, RICHARD A. SVOBODA, the defendant, obtained Inside Information that Anthem was contemplating the acquisition of the remaining outstanding shares of Acordia that it did not already own. On or about on February 7, 1997, Acordia publicly announced that it was considering the possible sale of its insurance brokerage business. In or about March 1997, Knightsbridge Capital, an investment banking firm, began negotiating with Acordia to acquire Acordia's insurance brokerage business, and sought financing from NationsBank for that purpose. An internal NationsBank memorandum, dated March 18, 1997, from a client relationship manager to, among others, SVOBODA's supervisor, stated that PennCorp, an insurance holding company affiliated with Knightsbridge, had "decided to move forward and submit its letter indicating initial price and structure" and that PennCorp "approached Nationsbank . . . to provide a 'Financibility' [sic] letter to submit with their bid letter."

46. A letter, dated March 19, 1997, from a NationsBank senior vice president and director to Knightsbridge and PennCorp, reflected the proposed acquisition of Acordia's insurance brokerage business, and that they were requesting that NationsBank evaluate the feasibility of providing debt financing to cover the acquisition costs. The letter also stated that NationsBank was

"confident that a transaction providing for \$200 million in debt financing . . . with the Acquisition Transaction [wa]s feasible."

47. On or about March 19, 1997, RICHARD A. SVOBODA, the defendant, while in possession of Inside Information concerning a potential acquisition of Acordia, used that Information to purchase approximately 3,000 shares of Acordia common stock at \$32.50 per share in MICHAEL A. ROBLES's, the defendant, brokerage account at Charles Schwab & Co.

48. By no later than April 22, 1997, RICHARD A. SVOBODA, the defendant, disclosed the Inside Information concerning Anthem's contemplated acquisition of Acordia to MICHAEL A. ROBLES, the defendant. ROBLES knew that this information was confidential, material, and non-public, and had been misappropriated by SVOBODA in breach of his fiduciary and other duties of trust and confidence. ROBLES used this Inside Information and purchased 1,600 shares of Acordia common stock for \$31.75 per share.

49. On or about May 20, 1997, Anthem and Acordia publicly announced the possible acquisition by Anthem of the publicly owned shares of Acordia not then currently owned by Anthem. As a result, Acordia's common stock price increased by \$1.25 per share, to \$45.875 per share.

50. On or about June 2, 1997, Acordia and Anthem publicly announced a definitive merger agreement whereby Anthem would acquire all of the remaining outstanding common stock of Acordia for \$40.00 per share.

51. On or about June 2, 1997, MICHAEL A. ROBLES, the defendant, sold his shares of Acordia common stock for \$39.50 per share, thereby earning an illegal profit of approximately \$32,596.

**Sun Healthcare's  
Acquisition of Regency**

52. In or about July 1997, RICHARD A. SVOBODA, the defendant, as a direct result of his employment by NationsBank, obtained Inside Information that Sun Healthcare was contemplating the acquisition of Regency. Specifically, on or about July 10, 1997, Sun Healthcare contacted NationsBank loan officers in an effort to arrange financing for the potential acquisition. On or about July 14, 1997, Sun Healthcare made a nonpublic written offer to Regency to acquire all of its outstanding shares for \$22.00 per share in cash, a \$7.00 premium above the then-current market price. By on or about July 18, 1997, at least thirty-three NationsBank employees were aware of Sun's contemplated buyout of Regency, nine of whom worked on the same floor as SVOBODA. One of the employees assigned to Sun Healthcare had an office located close to the office assigned to SVOBODA and shared a secretary with him. One or more of these employees also possessed documents reflecting the terms of Sun Healthcare's proposed buyout of Regency, including one that stated as follows:

It is our understanding that Sun Healthcare Group, Inc. . . . is interested in acquiring Regency Health Services, Inc. . . . . [W]e are confident that a transaction providing for \$440 million in debt financing with the Acquisition Transaction is feasible . . . and can be successfully arranged . . . . We are working towards

delivering to you a definitive commitment letter regarding this financing by the close of business Monday, July 21, 1997.

53. From in or about July 7, 1997 to in or about July 18, 1997, RICHARD A. SVOBODA, the defendant, was on vacation. SVOBODA returned to work on or about July 21, 1997 and thereafter SVOBODA disclosed the Inside Information concerning Sun Healthcare's contemplated acquisition of Regency to MICHAEL A. ROBLES, the defendant. ROBLES knew that this information was confidential, material, and non-public, and had been misappropriated by SVOBODA in breach of his fiduciary and other duties of trust and confidence. Using the Inside Information, on or about July 21, 1997, ROBLES purchased 5,000 shares of Regency common stock at \$14.94 per share. Over the next 32 hours, ROBLES purchased an additional 35,000 shares of Regency common stock at prices ranging from \$14.94 to \$15.00 per share. The following day, ROBLES used the Inside Information to purchase a total of 3,200 shares of Regency common stock for four clients of his tax accounting business, each of whom had granted him discretionary trading authority over their accounts.

54. On July 27, 1997, Regency and Sun Healthcare publicly announced that Sun Healthcare would acquire all of the outstanding shares of Regency for \$22.00 per share.

55. On or about July 28, 1997, MICHAEL A. ROBLES, the defendant, sold all of his shares of Regency common stock for \$21.19 per share, thereby earning an illegal profit of

approximately \$241,743. From on or about July 28, 1997 to on or about August 4, 1997, ROBLES sold the shares of Regency common stock he had purchased in his clients' accounts, for a combined illegal profit of approximately \$18,050.

**Petsmart Announces  
Lower Than Expected Earnings**

56. As of in or about July 1997, RICHARD A. SVOBODA, the defendant, served as the credit policy officer for Petsmart. As a direct result of that position, SVOBODA obtained Inside Information that Petsmart would be incurring a substantial restructuring charge and that its actual earnings would not meet analysts' estimates for Petsmart's second quarter ending August 3, 1997. Specifically, in an e-mail dated July 14, 1997, addressed to SVOBODA and of other NationsBank employees, a NationsBank debt specialist wrote that Petsmart's board of directors had "directed Petsmart management to conduct a thorough evaluation of all facts of the business . . . . Total charges related to these initiatives will approximate \$76[million]." The debt specialist included more detailed information concerning the restructuring in an internal memorandum, which she addressed to SVOBODA, among others, reporting that "Petsmart will report restructuring related charges of approximately \$76MM in the second [fiscal] quarter" ending August 3, 1997, and that results for Petsmart's second quarter would be "lower than projected." SVOBODA was copied on additional e-mails concerning Petsmart's restructuring.

57. As previously indicated, from in or about July 7, 1997 to on or about July 18, 1997, RICHARD A. SVOBODA, the defendant, was on vacation. SVOBODA returned to work on or about July 21, 1997, and disclosed the Inside Information concerning Petsmart's lower-than expected earnings to MICHAEL A. ROBLES, the defendant. ROBLES knew that this information was confidential, material, and non-public, and had been misappropriated by SVOBODA in breach of fiduciary and other duties of trust and confidence. On or about July 21, 1997, using the Inside Information, ROBLES sold 900 shares of Petsmart common stock, thereby avoiding losses of \$11,869.25, and covered 87 put option contracts that he had previously sold short. On or about July 21, 1997, ROBLES also sold short 1,100 shares of Petsmart common stock at \$10.50 per share. From on or about August 1, 1997 to on or about August 7, 1997, ROBLES sold short 22,000 additional shares of Petsmart common stock at prices ranging from \$10.50 to \$11.99 per share.

58. After the market closed on August 7, 1997, Petsmart publicly announced that its earnings would be in the range of two to four cents per share, short of Wall Street's nine cents per share estimate. Petsmart simultaneously disclosed that it would record charges in the range of \$60 to \$65 million to cover the costs of closing nine underperforming stores and relocating twenty-five other stores.

59. On or about August 8, 1997, Petsmart's common stock closed at \$8.91, a decrease of \$2.84 over the previous day's

closing price. On or about August 8, 1997, MICHAEL A. ROBLES, the defendant, covered his entire short position in Petsmart at \$8.50 per share, thereby earning an illegal profit of approximately \$69,789.75. On or about July 22, 1997, ROBLES also sold a total of 2,400 shares of Petsmart common stock that he had purchased on behalf of his clients.

**Credit Acceptance  
Announces A Substantial Loss**

60. As of in or about October 1997, RICHARD A. SVOBODA, the defendant, served as the credit policy officer for Credit Acceptance. As a direct result of that position, SVOBODA obtained Inside Information that Credit Acceptance would be reporting a substantial loss for the quarter ending September 30, 1997. On or about October 10, 1997, a NationsBank analyst sent an e-mail to SVOBODA and others stating that Credit Acceptance had requested, in a teleconference on October 9, 1997, a waiver of the fixed charge covenant in its Credit Agreement with NationsBank. The e-mail further stated that Credit Acceptance, that it intended to record a special charge against earnings for the third quarter, and that its new accounting procedures would have a negative impact on its financial results for the quarter ending September 30, 1997.

61. By no later than on or about October 15, 1997, RICHARD A. SVOBODA, the defendant, disclosed the Inside Information concerning Credit Acceptance's substantial loss for the quarter to MICHAEL A. ROBLES, the defendant. ROBLES knew that this

information was confidential, material, and non-public, and had been misappropriated by SVOBODA in breach of fiduciary and other duties of trust and confidence. On or about October 15, 1997, using the Inside Information, ROBLES sold short 10,000 shares of Credit Acceptance common stock at \$12.44 per share. On or about October 17, 1997, ROBLES sold short 10,000 additional Credit Acceptance shares at prices ranging from \$11.31 to \$11.88 per share.

62. On or about October 22, 1997, Credit Acceptance publicly announced a net loss of \$27.7 million for the quarter ending September 1997, and that it was taking a special charge against earnings. As a result, Credit Acceptance's common stock price closed at \$6.00 per share on October 23, 1997, a decline of \$3.75 per share from the previous day's closing price.

63. On or about October 23, 1997, MICHAEL A. ROBLES, the defendant, covered his entire short position in Credit Acceptance at prices ranging from \$7.25 to \$7.63 per share, thereby earning an illegal profit of approximately \$85,726.

**O'Reilly Automotive's  
Acquisition of Hi-Lo Automotive**

64. As of in or about November 1997, RICHARD A. SVOBODA, the defendant, served as the credit policy officer for O'Reilly Automotive. As a direct result of that position, SVOBODA obtained Inside Information that O'Reilly Automotive was contemplating the acquisition of Hi-Lo Automotive. Specifically, SVOBODA received a



letter, dated November 25, 1997, in which the Chairman of the Board of O'Reilly Automotive offered to:

acquire the common stock of Hi-Lo for \$4.25 per share in cash, representing a 54.4% premium to the Company's closing stock price on Monday, November 24, 1997 . . . . O'Reilly Automotive will fund the cash requirements to complete this transaction with bank borrowings. We have discussed the potential transaction with NationsBank and DLJ and believe that there is no impediment to financing given our strong balance sheet.

65. By no later than on or about December 4, 1997, RICHARD A. SVOBODA, the defendant, disclosed the Inside Information concerning O'Reilly's contemplated acquisition of Hi-Lo Automotive to MICHAEL A. ROBLES, the defendant. ROBLES knew that this information was confidential, material, and non-public, and had been misappropriated by SVOBODA in breach of fiduciary and other duties of trust and confidence. On or about December 4, 1997, using the Inside Information, ROBLES placed an order to purchase 5,000 shares of Hi-Lo Automotive common stock at a limit price of \$2.875 per share. From on or about December 4, 1997 to on or about December 22, 1997, ROBLES purchased a total of approximately 147,800 shares of Hi-Lo Automotive common stock.

66. On December 23, 1997, O-Reilly Automotive and Hi-Lo Automotive publicly announced a definitive merger agreement pursuant to which O'Reilly Automotive would make a \$4.35 per share cash tender offer for all of Hi-Lo Automotive's outstanding shares.

67. On December 23, 1997, following the public announcement of the merger agreement between O'Reilly Automotive and Hi-Lo Automotive, MICHAEL A. ROBLES, the defendant, sold 50,000

shares of Hi-Lo Automotive common stock at prices ranging from \$4.1875 to \$4.25 per share. In or about January 1998, ROBLES tendered his remaining 97,800 shares Hi-Lo Automotive common stock. ROBLES' aggregate illegal trading profits from his purchases of Hi-Lo Automotive common stock were approximately \$189,282.

### **Other Trading**

68. Between in or about 1994 and in or about 1997, RICHARD A. SVOBODA and/or MICHAEL A. ROBLES, the defendants, traded in securities issued by a number of other companies who were NationsBank clients, during a time at which NationsBank had received confidential, material nonpublic information concerning these companies. Those companies include Transitional Hospitals Corporation, Magnetek, and Worldway Corporation, which all traded on the NYSE.

### **The Conspiracy**

69. From in or about November 1994 to in or about December 1997, in the Southern District of New York and elsewhere, RICHARD A. SVOBODA, and MICHAEL A. ROBLES, the defendants, and others known and unknown, unlawfully, wilfully, and knowingly did combine, conspire, confederate and agree together and with each other to commit offenses against the United States, to wit, (a) to commit securities fraud in violation of Title 15, United States Code, Sections 78j(b) and 78ff, and Title 17, Code of Federal Regulations, Section 240.10b-5, and (b) to commit fraud in connection with tender offers, in violation of Title 15, United

States Code, Sections 78n(e) and 78ff, and Title 17, Code of Federal Regulations, Section 240.14e-3(a)

**Objects of the Conspiracy**

70. It was a part and object of the conspiracy that RICHARD A. SVOBODA, and MICHAEL A. ROBLES, the defendants, and others known and unknown, unlawfully, wilfully and knowingly, directly and indirectly, by use of the means and instrumentalities of interstate commerce, the mails and the facilities of national securities exchanges, did use and employ manipulative and deceptive devices and contrivances, in violation of Title 15, Code of Federal Regulations, Section 240.10b-5, by (a) employing devices, schemes and artifices to defraud; (b) making untrue statements of material facts and omitting to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; and (c) engaging in acts, practices and courses of business which operated and would and did operate as a fraud and deceit upon the investing public, NationsBank and certain of its clients, in connection with the purchase or sale of securities, in violation of Title 15, United States Code, Sections 78j(b) and 78ff, and Title 17, Code of Federal Regulations, Section 240.10b-5.

71. It was a further part and object of the conspiracy that RICHARD A. SVOBODA and MICHAEL A. ROBLES, the defendants, and others known and unknown, unlawfully, wilfully and knowingly, did engage in fraudulent, deceptive, and manipulative acts and

practices in connection with a tender offer, in that after the offering person had taken substantial steps to commence a tender offer, ROBLES, while in possession of material information obtained from SVOBODA, which information related to such tender offer and which the defendants knew or had reason to know was nonpublic, and had been acquired directly and indirectly from the offering person, or from persons acting on behalf of the offering person, or the issuer of the securities sought or to be sought by such tender offer, or any officer, director, partner or employee or any other person acting on behalf of the offering person or such issuer, purchased and sold such securities to obtain such securities, without first publicly disclosing such information and its source, in violation of Title 15, United States Code, Sections 78n(e) and 78ff, and Title 17, Code of Federal Regulations, Section 240.14e-3(a).

### **Means of the Conspiracy**

72. Among the means and methods by which RICHARD A. SVOBODA and MICHAEL A. ROBLES, the defendants, and others known and unknown, would and did carry out the conspiracy were the following:

a. RICHARD A. SVOBODA, the defendant, misappropriated the Inside Information set forth in Paragraphs 1 through 68 above, in violation of (a) the fiduciary and other duties of trust and confidence that SVOBODA owed to NationsBank and the NationsBank Clients; (b) the expectations of confidentiality of the NationsBank Clients; and (c) NationsBank's written policies

regarding the use and safekeeping of confidential and proprietary client information.

b. RICHARD A. SVOBODA, the defendant, while in possession of Inside Information that he had misappropriated from NationsBank and the NationsBank Clients, purchased and sold securities, and thereby received substantial illegal profits, all in violation of the law.

c. RICHARD A. SVOBODA, the defendant, disclosed Inside Information that he had misappropriated from NationsBank and the NationsBank clients to MICHAEL A. ROBLES, the defendant, with the understanding that ROBLES would use that Inside Information to purchase and sell securities using of that Inside Information, and thereby receive substantial illegal profits, all in violation of the law.

d. MICHAEL A. ROBLES, the defendant, while in possession of Inside Information that ROBLES knew that RICHARD A. SVOBODA, the defendant, had misappropriated in breach of a duty to keep such information confidential, purchased and sold securities, and thereby received substantial illegal profits, all in violation of the law.

#### **Overt Acts**

73. In furtherance of the conspiracy and to effect the unlawful objects thereof, the following overt acts, among others, were committed in the Southern District of New York and elsewhere:

a. On or about November 18, 1994, RICHARD A.

SVOBODA, the defendant, purchased 4,500 shares of Daniel common stock, which traded on the NYSE in the Southern District of New York.

b. On or about January 6, 1995, MICHAEL A. ROBLES, the defendant, purchased 1,000 shares of Daniel common stock which traded on the NYSE in the Southern District of New York.

c. On or about November 3, 1995, RICHARD A. SVOBODA, the defendant, purchased 5,000 shares of NPC common stock.

d. On or about November 3, 1995, MICHAEL A. ROBLES, the defendant, purchased 6,000 shares of NPC common stock.

e. On or about December 6, 1995, MICHAEL A. ROBLES, the defendant, sold 6,000 shares of NPC common stock.

f. On or about December 7, 1995, RICHARD A. SVOBODA, the defendant, sold 5,000 shares of NPC common stock.

g. On or about February 22, 1996, RICHARD A. SVOBODA, the defendant, purchased 50,000 shares of Bionaire common stock.

h. On or about February 22, 1996, MICHAEL A. ROBLES, the defendant, purchased 58,000 shares of Bionaire common stock.

i. On or about November 8, 1996, MICHAEL A. ROBLES, the defendant, sold short 10,000 shares of Ivax common stock, which traded on the American Stock Exchange in the Southern District of New York.

j. On or about December 5, 1996, RICHARD A.

SVOBODA, the defendant, purchased 5,000 shares of Eljer common stock, which traded on the NYSE in the Southern District of New York.

k. On or about March 31, 1997, MICHAEL A. ROBLES, the defendant, purchased 5,000 shares of Varsity Spirit common stock.

l. On or about March 19, 1997, RICHARD A. SVOBODA, the defendant, caused 3,000 shares of Acordia common stock, which traded on the NYSE in the Southern District of New York, to be purchased on behalf of MICHAEL A. ROBLES, the defendant.

m. On or about April 22, 1997, MICHAEL A. ROBLES, the defendant, purchased 1,600 shares of Acordia common stock, which traded on the NYSE, in the Southern District of New York.

n. On or about July 21, 1997, MICHAEL A. ROBLES, the defendant, purchased 5,000 shares of Regency common stock, which traded on the NYSE in the Southern District of New York.

o. On or about July 21, 1997, MICHAEL A. ROBLES, the defendant, sold 900 shares of Petsmart common stock.

p. On or about August 7, 1997, MICHAEL A. ROBLES, the defendant, sold short 10,000 shares of Petsmart common stock.

q. On or about October 15, 1997, MICHAEL A. ROBLES, the defendant, sold short 10,000 shares of Credit Acceptance common stock.

r. On or about December 4, 1997, MICHAEL A. ROBLES, the defendant, purchased 5,000 shares of Hi-Lo Automotive

common stock, which traded on the NYSE in the Southern District of New York.

(Title 18, United States Code, Section 371)

**COUNTS TWO THROUGH TWELVE**

(Fraud in Connection with the  
Purchase and Sale of Securities)

The Grand Jury further charges:

74. The allegations of paragraphs 1 through 68 and 72 are repeated and realleged as though fully set forth herein.

75. On or about the dates set forth below, in the Southern District of New York and elsewhere, RICHARD A. SVOBODA, and MICHAEL A. ROBLES, the defendants, unlawfully, wilfully and knowingly, directly and indirectly, by use of the means and instrumentalities of interstate commerce, the mails and the facilities of national securities exchanges, did use and employ manipulative and deceptive devices and contrivances, in violation of Title 15, Code of Federal Regulations, Section 240.10b-5, by (a) employing devices, schemes and artifices to defraud; (b) making untrue statements of material facts and omitting to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; and (c) engaging in acts, practices and courses of business which operated and would and did operate as a fraud and deceit in connection with the purchase and sale of securities as specified below:



COUNT	DEFENDANT (S)	DATE	SECURITIES PURCHASED OR SOLD
<b>TWO</b>	RICHARD A. SVOBODA	02/22/96	Purchase of 20,000 shares of Bionaire common stock
<b>THREE</b>	RICHARD A. SVOBODA MICHAEL A. ROBLES	02/22/96	Purchase of 58,000 shares of Bionaire common stock
<b>FOUR</b>	RICHARD A. SVOBODA MICHAEL A. ROBLES	11/08/96	Short sale of 10,000 shares of Ivax common stock
<b>FIVE</b>	RICHARD A. SVOBODA	12/05/96	Purchase of 5,000 shares of Eljer common stock
<b>SIX</b>	RICHARD A. SVOBODA MICHAEL A. ROBLES	03/31/97	Purchase of 1,100 shares of Varsity Spirit common stock
<b>SEVEN</b>	RICHARD A. SVOBODA MICHAEL A. ROBLES	03/19/97	Purchase of 1,000 shares of Acordia common stock
<b>EIGHT</b>	RICHARD A. SVOBODA MICHAEL A. ROBLES	04/22/97	Purchase of 1,600 shares of Acordia common stock
<b>NINE</b>	RICHARD A. SVOBODA MICHAEL A. ROBLES	07/21/97	Purchase of 5,000 shares of Regency common stock
<b>TEN</b>	RICHARD A. SVOBODA MICHAEL A. ROBLES	07/21/97	Sale of 900 shares of Petsmart common stock
<b>ELEVEN</b>	RICHARD A. SVOBODA MICHAEL A. ROBLES	10/15/97	Short sale of 10,000 shares of Credit Acceptance common stock
<b>TWELVE</b>	RICHARD A. SVOBODA MICHAEL A. ROBLES	12/04/97	Purchase of 5,000 shares of Hi-Lo Automotive stock common stock

(Title 15, United States Code, Sections 78j(b) & 78ff;  
Title 17, Code of Federal Regulations, Section 240.10b-5).

**COUNTS THIRTEEN THROUGH TWENTY**

(Fraud in Connection with Tender Offers)

The Grand Jury further charges:

76. The allegations of paragraphs 1 through 68, and 72, are repeated and realleged as though fully set forth herein.

77. On or about the dates set forth below, in the Southern District of New York and elsewhere, RICHARD A. SVOBODA, and/or MICHAEL A. ROBLES, the defendants, and others known and unknown, unlawfully, wilfully and knowingly, did engage in fraudulent, deceptive, and manipulative acts and practices in connection with a tender offer, to wit, that after the respective offering persons had taken substantial steps to commence tender offers for the securities listed below, by the defendants specified below, while in possession of material information relating to such tender offers, which information SVOBODA and ROBLES knew or had reason to know was nonpublic, and had been acquired directly and indirectly from the offering person, or from persons acting on behalf of the offering person, or the issuer of the securities sought or to be sought by such tender offer, or any officer, director, partner or employee or any other person acting on behalf of the offering person or such issuer], purchased and sold such securities, without first publicly disclosing such information and its source, as specified in each count below:

COUNT	DEFENDANT (S)	DATE	SECURITIES PURCHASED OR SOLD
<b>THIRTEEN</b>	RICHARD A. SVOBODA	02/22/96	Purchase of 20,000 shares of Bionaire common stock
<b>FOURTEEN</b>	RICHARD A. SVOBODA MICHAEL A. ROBLES	02/22/96	Purchase of 58,000 shares of Bionaire common stock
<b>FIFTEEN</b>	RICHARD A. SVOBODA	12/05/96	Purchase of 5,000 shares of Eljer common stock
<b>SIXTEEN</b>	RICHARD A. SVOBODA MICHAEL A. ROBLES	03/31/97	Purchase of 1,100 shares of Varsity Spirit common stock
<b>SEVENTEEN</b>	RICHARD A. SVOBODA MICHAEL A. ROBLES	03/19/97	Purchase of 1,000 shares of Acordia common stock
<b>EIGHTEEN</b>	RICHARD A. SVOBODA MICHAEL A. ROBLES	04/22/97	Purchase of 1,600 shares of Acordia common stock
<b>NINETEEN</b>	RICHARD A. SVOBODA MICHAEL A. ROBLES	07/21/97	Purchase of 5,000 shares of Regency common stock
<b>TWENTY</b>	RICHARD A. SVOBODA MICHAEL A. ROBLES	12/04/97	Purchase of 5,000 shares of Hi-Lo Automotive common stock

(Title 15, United States Code, Sections 78n(e) and 78ff, and Title 17, Code of Federal Regulations, Section 240.14e-3(a)).

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FOREPERSON

\_\_\_\_\_  
MARY JO WHITE